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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re L.D., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.D.,

Defendant and Appellant.

B290022

(Los Angeles County
Super. Ct. No.
17CCJP01977A)

APPEAL from an order of the Superior Court of Los Angeles County, Martha Matthews, Judge. Dismissed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Jerry D. (Father) appeals from the juvenile court's jurisdictional findings and dispositional order removing his one-year-old daughter L.D. from his custody. He contends the evidence was insufficient to support the juvenile court's finding of dependency jurisdiction under Welfare and Institutions Code section 300, subdivisions (a), (b)(1), and (j)¹—as it pertains to his conduct only. Mother is not a party to the appeal.

There were several challenged bases upon which the trial court asserted jurisdiction and found removal appropriate. There was an incident of domestic violence between Father and Mother which occurred seven months before L.D. was born and which Father argues was an isolated occurrence. Father argues he and Mother terminated their relationship before the jurisdiction hearing so a finding of “current risk” of harm was not sustainable. Father has been a registered sex offender since 1992; he argues the remoteness of the conviction belies any current or future risk of harm to L.D. Finally, Father also challenges the dispositional order removing L.D. from his custody pursuant to section 361, subdivision (c).

Mother has not appealed the jurisdictional findings and dispositional order over the children. We find it unlikely the juvenile court's specific findings as to Father will unduly prejudice him in the future and dismiss his appeal.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Family's Prior Dependency Cases*

L.D. is Mother's fourth child, but her first with Father. The family has a lengthy history with the Los Angeles County Department of Children and Family Services (DCFS), much of it predating L.D.'s birth and Father's relationship with Mother.

1. First Petition (2011)

In 2011, DCFS filed a dependency petition against Mother as to then 10-year-old B.B. and then eight-year-old S.B. DCFS alleged Mother's "male companion" at the time, Antonelle, sexually abused Mother's daughter B.B. in multiple instances when he threw her on the bed, told her to touch his penis, "instructed the child to unbutton [her] pants[,] and "attempted to force [her] to touch the male companion's penis." He was arrested for lewd acts with a child under the age of 14. DCFS also alleged Mother and Antonelle engaged in a violent altercation in B.B.'s presence and Mother "knew about her male companion's criminal history and should have known of the sexual abuse of the child" and placed B.B. and her younger sibling S.B. "at risk of physical and emotional harm, damage, danger, sexual abuse[,] and failure to protect." Finally, the petition also alleged that Mother had a "14 year history of unresolved domestic violence" with Billy B.—the father of B.B. and S.B.—who was convicted for the attempted murder of Mother in 1998. During Mother's and Billy B.'s 14-year-long relationship, the children were exposed to their parents' violent domestic altercations. The juvenile court sustained the petition as amended and found the minor children dependents of the court.

2. Second Petition (2013)

In 2013, DCFS alleged B.B., S.B., and J.B.—then ages 13, 10, and 1, respectively—were “at risk of physical harm, damage, danger, [and] sexual abuse” because of Mother’s failure to protect B.B. from sexual abuse she suffered by an “unrelated male child Darnell.” The petition alleged the unrelated male child “orally copulated the child [B.B.]’s vagina” and made statements that he “wanted to have sex with the child” on prior occasions. Mother allowed the unrelated male child “unlimited access” to B.B. and endangered the child’s physical health and safety. The petition was dismissed without prejudice, pursuant to Mother’s agreement to participate in voluntary services offered by DCFS.

3. Third Petition (2014)

In 2014, DCFS filed another petition as to B.B., S.B., and J.B. The petition alleged B.B. “has left home and engaged in high risk sexual activity” on numerous prior occasions, and that Mother was aware of the child’s endangering behaviors and did not take adequate steps to address the child’s unsafe behaviors; it was further alleged Mother’s failure to provide B.B. with “appropriate parental care and supervision and . . . failure to protect the child” not only endangered B.B.’s physical health and safety but also placed B.B. and her siblings—S.B. and J.B.—“at risk of physical harm, damage, danger, sexual abuse[,] and failure to protect.” The court sustained the allegations of failure to protect and supervise, as amended.

4. Fourth and Fifth Petitions (2015)

On June 24, 2015, DCFS filed a dependency petition alleging Mother created a detrimental and endangering home environment for the children—S.B. and J.B.—in that she allowed her “male companion, Jerry D[.], who the mother knows to be a

Registered Sex Offender[,] to reside in the children's home and have unlimited access to the children." At the time Mother and Jerry D., appellant herein, were married. That same day, DCFS filed a section 342 petition with the same allegations as to B.B., whose whereabouts were unknown. The court sustained the two petitions, and ordered "no contact" between Father and children. The court placed S.B. and J.B. with Mother "on the condition [Father] is not in the home for any reason."

5. Sixth Petition (2016)

On August 4, 2016, DCFS filed a section 342 petition against Mother as to S.B., then age 13, and J.B., then age 4, pursuant to section 300, subdivisions (a) and (b). It alleged on July 16, 2016, Mother and Father engaged in a "violent physical and verbal altercation" where Father "struck the mother's head, in the presence of the children . . . , resulting in the mother's wig falling from [her] head." It was also alleged Mother "failed to protect the children" by allowing Father "to frequent the children's home and have unlimited access to the children in violation of [the] Juvenile Court Order."² The court sustained the petition, removed S.B. and J.B. from Mother's custody, placed the minors in care of DCFS for suitable placement, and ordered monitored visits for Mother. Mother was ordered to complete a domestic violence support group program and a parenting program, and to participate in individual counseling to address "case issues including sexual abuse awareness."

² The "Juvenile Court Order" in question is the court's order in connection with the sustained June 24, 2015 petitions, where Father was to have "no contact" with Mother's children and "not [be] in [Mother's] home for any reason."

The juvenile court did not release S.B. and J.B. to Mother until April 14, 2017, and did so “on the condition Mother resides in the home of the maternal grandmother and there is no contact with [Father].” Upon locating B.B., on May 25, 2017, the juvenile court ordered her placed with Mother conditioned upon Mother “resid[ing] in DCFS[-]approved housing and [that] there is no contact with [Father].”

6. Seventh Petition (2017)

On September 25, 2017, DCFS filed a section 342 dependency petition against Mother as to 17-year-old B.B. It alleged Mother “is unable to provide the child with ongoing care and supervision due to the child’s chronic runaway behavior” and for allowing the maternal uncle “to frequent the child’s home and abuse illicit drugs in the child’s presence.” B.B. had “complained about lack of food in the home” and Mother “allowing her brother (uncle) to smoke marijuana in the room”; it was suspected that Mother was also using marijuana and crack-cocaine. B.B. also complained about Mother leaving her home alone with baby sister L.D. for more than 12 hours “starting around 3 am” and that this would “happen[] about 1-2 times per week.”

It was also alleged that in June 2017, Father “sexually abused [B.B.] by exposing [his] . . . genitals to the child and asking the child to have oral sex with [him].” It was discovered Mother was aware of the alleged incident, did not report it, and told the child not to report it. Despite the juvenile court’s prior order that Father was to have “no contact” with the children and that Mother was not to allow the children to have contact with Father, she and L.D. were reportedly residing with Father. The court ordered B.B. removed from Mother’s custody, care, and control.

B. *Eighth and Current Dependency Petition*

On November 21, 2017, DCFS filed a petition alleging nine-month-old L.D. came within the jurisdiction of the juvenile court under section 300 based on the following allegations:

Counts a-1, b-2, b-3, and j-1: “On a prior occasion . . . , [Mother and Father] engaged in a violent physical and verbal altercation” where Father struck Mother’s head “in the presence of [L.D.]’s siblings . . . , resulting in the mother’s wig falling from [her] head.” Mother “failed to protect the siblings” by allowing Father “to frequent the siblings’ home and have unlimited access to the siblings in violation of a [prior] Juvenile Court Order that mother was not to allow the father in the siblings’ home for any reason” as the siblings are dependents of the court “due to the parents’ violent altercations.” Father’s violent conduct against Mother and Mother’s failure to protect the siblings “endanger[ed L.D.]’s physical health and safety, placing the child at risk of harm, damage, danger”

Counts b-1, d-1: Father is a registered sex offender and was convicted of assault to commit mayhem/rape in 1992. Father’s criminal history and conduct and Mother’s failure to protect L.D. by allowing Father to reside with L.D. “place[d] the child at risk of serious physical harm, damage, danger[,] and sexual abuse.”

Count j-2: Mother “failed to provide [L.D.]’s sibling [B.B.] with appropriate parental care and supervision and . . . failed to protect” despite being “aware of [B.B.]’s endangering behaviors[,]” i.e., B.B. leaving home and engaging in high risk sexual activity.

DCFS alleged Father’s violence against Mother, his criminal history and conduct, and Mother’s failure to protect L.D.

and her siblings endangered L.D.'s physical health and safety, and placed the child at risk of serious physical harm, damage, danger, and sexual abuse.

DCFS later amended the petition, and added counts b-4 and j-3, which alleged: Father "sexually abused" L.D.'s sibling B.B. in June 2017 "by exposing [his] genitals to the child and asking the child to have oral sex with [him]." Mother "knew or reasonably should have known of the sexual abuse" and "failed to protect" B.B. by allowing Father "to frequent the child's home." Father's sexual abuse and Mother's "failure to protect the child endanger[ed] the child[]" and placed her "at risk of serious physical harm, damage, danger, sexual abuse"

C. *Investigation*

Mother asserted the allegations were "completely false." She stated she and Father "never fought in front of the kids" and Father "did nothing to [her] children." She asserted B.B. was "under the command of . . . her pimp" and "lied about everything because she was mad and . . . wanted to hurt [M]other." Mother said she "put [her] life at risk going out at night, standing on corners" and "asking questions" about B.B. to find her when she would run away from Mother's residence.

Mother further stated she "was aware that she was not to allow the child/children to have contact" with Father, but had no choice to stay with Father after she was evicted from the motel she was staying at. Mother also stated she was aware of Father's past and believed he would not harm L.D. She agreed to move in with a relative at an undisclosed address "unknown to Father."

Father also denied the allegations, saying B.B. frequently lies. He agreed to relinquish L.D. to DCFS so that the child could stay with Mother and not go into placement.

Mother's CLETS revealed a 2001 conviction for inflicting corporal injury on a spouse or cohabitant.

Father's CLETS revealed an extensive criminal history. From 1975 until 1990, he was arrested or convicted multiple times for various crimes including, but not limited to, possession of controlled substances, grand theft, inflicting battery on a peace officer, disturbing the peace, driving under the influence, robbery, exhibiting a deadly weapon and/or firearm, presenting false identification to a peace officer, petty theft. In 1992, Father was convicted of assault with a deadly weapon and assault to commit mayhem/rape; he was sentenced to serve seven years in prison.³ In 1995, Father registered as a sex offender. In 1999, he was convicted of inflicting corporal injury on a spouse or cohabitant and was sentenced to nine years in prison. In 2007, Father received enhanced prison terms because he had committed battery while in prison.

³ Although Father acknowledged he had assaulted his ex-wife in 1991, he stated "[t]here was no rape." He claimed "everything was changed around while [he] was incarcerated" and he later discovered he had to register as a sex offender for allegedly attempting to rape his niece who is "mentally ill." Father's ex-wife had claimed she saw Father laying on top of his 16-year-old mentally and physically handicapped niece, who was screaming. Father's ex-wife had delayed reporting what she had seen because "he threaten[e]d her with a knife in regards to telling anyone about this incident." When the victim's pink pajamas were booked into evidence, they were "torn at the waist" and had "blood stains in crotch area of pajama pants." Despite this, Father claimed that "because [his] great niece was there [at the time of the domestic violence incident with his then-wife,] they assumed the worse and the officers wrote it up like that."

DCFS assessed L.D. at “high” risk.

At the November 22, 2017 detention hearing, the juvenile court detained L.D. from Father, released L.D. to Mother “contingent on DCFS making unannounced home visits,” and allowed Father monitored visitation.

On December 29, 2017, Mother called the children’s former caregiver to retrieve the children’s cell phones which had been left with her. When the caregiver refused to return them immediately, Father “took the phone from [M]other and began to threaten [the caregiver] and demanded her address.” Mother quickly called back and stated Father “was not inside the house but outside the house” and that “the children were inside the house.” The caregiver told the social worker she was “concern[ed] because [M]other was told several times . . . that [Father] is not to know where [M]other and the children live.” Mother stated Father is her “lifeline” and she “relies on him for everything from food, companionship and money.”

Mother reported she completed a 52-week-long domestic violence program; DCFS could not confirm this information. Mother later “denied that she ha[d] receiv[ed] any therapy for past domestic violence.” She reported having obtained stable housing for herself and the children and stated Father did not know where they reside. DCFS made unannounced visits to Mother’s and the children’s residence and reported “there have been no signs of [F]ather.”

On January 4, 2018, Mother said the children were “out of control” and she needed help. It was reported she said she “wants to give these boys a beating until they’re ‘black and blue’ so that they behave.” In addition, Mother reported she was

diagnosed with schizophrenia, bipolar disorder, mild personality disorder, and mild dysthymia.

As of January 24, 2018, DCFS reported Father had not visited L.D. Father provided copies of certificates for past programs he had completed, including a parenting program, the IMPACT program, and an anger management program. Father said he was never asked to participate in a program that addressed sexual abuse.

On January 29, 2018, the juvenile court, having already detained L.D. from Father, ordered L.D. detained from Mother with monitored visitation for both parents. The court gave DCFS the discretion to place L.D. with any appropriate relative or nonrelative extended family member. It was reported that Father remained Mother's In-Home Supportive Services (IHSS) provider until shortly after the January 29, 2018 detention hearing, when Mother's parental support and service provider from Wraparound went to IHSS and "t[ook] him off."

On March 21, 2018, DCFS informed the court that Mother's visits were going well; DCFS recommended unmonitored visits for Mother. There were issues with Father's visitation on L.D.'s first birthday, as Father wanted to attend the birthday party but could not because S.B. and J.B. were there, and Father "is not to be around" them. Father said he and Mother last lived together "around October, November 2017."

The dependency case investigator was concerned about "Mother and Father minimizing the father's conviction" and Father "den[y]ing the situation" regarding the sexual abuse of his mentally and physically handicapped niece. The case investigator further stated Mother was "not recognizing the big picture" and despite the "no-contact order in the past[,] Mother

continued the relationship with Father and “was still in contact with the dad. . . .”

DCFS also informed the court Mother had filed for a divorce from Father on an unknown date.

D. *Jurisdiction and Disposition*

The court held its combined jurisdictional and dispositional hearing on March 21, 2018 and April 3, 2018.

After considering the evidence presented and argument by counsel, the juvenile court dismissed several counts. It sustained the allegations relating to 1) the prior domestic violence incident seven months before L.D.’s birth; 2) Mother giving Father unlimited access to the children despite the prior no-contact order of the juvenile court; and 3) Father’s status as a registered sex offender and his conviction of assault to commit mayhem/rape in 1992.

The court discussed its reasoning: “Although there has not been any very recent incidents of domestic violence, the long-standing pattern of violence and the seriousness of the domestic violence . . . meets [DCFS]’s burden of proof in terms of it presenting a risk to the child, [L.D].” The court found “true as pled” that Father “has that [registered sex offender] status and he has that [1992] conviction” and that Mother “was aware . . . and did not appear to take steps to inquire further into whether it would be safe for [Father] to reside with the child.”

The court dismissed the counts for which the only supporting evidence was the summary of B.B.’s statements in the DCFS reports, as hearsay testimony of an unavailable witness—i.e., B.B.—is inadmissible. The court also stated Father had produced sufficient evidence to rebut the section 355.1, subdivision (d) presumption of harm arising from his status as a

registered sex offender so that the parties were “back on a level playing field where they started.” The court found Father’s 1992 conviction remote in time and found no evidence suggesting there was a substantial risk L.D. would be sexually abused. The court further differentiated between the circumstances surrounding the 1992 conviction regarding his then 16-year-old niece and the current circumstances surrounding L.D., and stated that L.D. is “a one-year-old child. The circumstances are completely different. I just don’t think that I have evidence to find that substantial risk as of today.” However, the court believed it was appropriate as a section 300, subdivision (b) count because “it shows failure or inability to supervise and protect” L.D.

Father “object[ed] to the court making removal findings from him” as he did “not contest[] the case plan” and joined with Mother’s argument that L.D. be released to the home of Mother.

Pursuant to section 300, subdivisions (a), (b)(1), and (j), the court declared L.D. a dependent of the court and removed her from parental custody, finding it could not ensure her safety and well-being without detention from the parents. Mother was granted unmonitored visits and Father was granted monitored visits.

In making the disposition orders, the court found “the long history of this case indicates that Mother is a vulnerable person” who suffered domestic violence not just by Father, but also from her former male companions. It appeared to the court Mother is “at the very beginning of being able to” keep Father away from her and “enforce boundaries”; however, the fact remained that “there was a no-contact order in effect since April of [2017]” and “Mother remained in a relationship with [Father] and did give him access to the children in violation of the order throughout . . .

most of last year.” The court also stated that it did not appear as if “Mother really has ended her relationship with [Father] as opposed to just trying to appear to do so to satisfy the court and DCFS”

Father timely appealed the jurisdictional and dispositional orders.

DISCUSSION

Father’s Appeal is Not Justiciable.

As a general rule, “‘[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.’” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) Thus, “a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings.” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Additionally, “[b]ecause the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only. In those situations, an appellate court need not consider jurisdictional findings based on the other parent’s conduct. [Citation.]” (*In re J.C.* (2014) 233 Cal.App.4th 1, 3–4.)

An appellate court may nevertheless exercise its discretion to address the merits of the jurisdictional findings involving a parent where the finding (1) serves as the basis for dispositional orders that are also challenged on appeal; (2) could be prejudicial to the appellant or could potentially impact the current or future

dependency proceedings; or (3) could have other consequences for the appellant, beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763; see also *In re J.C.*, *supra*, 233 Cal.App.4th at p. 4.)

Here, Mother did not appeal the court’s findings as to her. On appeal, Father acknowledges we may decline to address his challenges to the juvenile court’s jurisdictional findings against him. Father asks that we exercise our discretion to consider the merits of his challenge to the sustained counts because the court’s jurisdictional finding that Father poses a risk to L.D.’s physical health and safety could prejudicially impact Father in future dependency and family court proceedings.

We decline to take up Father’s appeal. The juvenile court dismissed the most aggravated allegations against Father. The findings that the court did make with respect to Father (that he engaged in domestic violence seven months before L.D.’s birth and that his conviction shows a lack of protectiveness) are mild at best, particularly compared to the disrespect Father accorded the juvenile court’s no-contact detention order in this and prior cases—he continued to live with Mother and L.D., despite the order, for at least part of the pendency of this case. We find it unlikely that the particular findings of the juvenile court will unduly prejudice Father in any future dependency or family court proceedings. We therefore decline to exercise our discretion to consider the merits of Father’s appeal.

DISPOSITION

The appeal is dismissed.

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STRATTON, J.

We concur:

GRIMES, Acting P. J.

WILEY, J.